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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/715,869	09/19/1996	STEVE W. HEPPLER	2972US(92-04	5113

7590 01/22/2004

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT PAPER NUMBER

3653

DATE MAILED: 01/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

08/715,869

Applicant(s)

HEPPLER, STEVE W.

Examiner

Joseph C Rodriguez

Art Unit

3653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16, 19, 22, 25-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16, 19, 22, 25-27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

***Final Rejection***

Applicant's arguments filed 8/16/01 have been fully considered and the pertinent rejections have been withdrawn. Instructions for bringing the case into condition for allowance are noted below.

The 35 U.S.C. 251 rejections are maintained or modified as follows:

The 35 U.S.C. 251 improper recapture rejections have been withdrawn.

Claims 1-13, 16, 19, 22, 25-27 and 29-31 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth below. See 37 CFR 1.175.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) as it fails to contain a statement that all amendments made since the filing of the reissue were made without any deceptive intention on the part of the applicant.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1), that also encompasses the amendments required below, will overcome this rejection under 35 U.S.C. 251.

### ***Claim Objections***

Claims 1-13, 16, 19, 22, 25-27 and 29-31 are objected to under 37 CFR 1.173, as being of improper form. Applicant is required to cancel the claims, or amend the claims to place the claims in proper form.

Here, the claims presented in the amendment of 8/13/01 are not in compliance with 37 CFR 1.173. In accordance with 37 CFR 1.173(b)(2) and (d), any changes to the specification, including the claims, must include specific markings in the submitted version of the claims. That is, two versions (actual amendments + "version with markings") are not to be submitted, but one version with the appropriate markings. If the original claims are unamended, they should be reinstated and not represented.

Further, in accordance with 37 CFR 1.173(c), an "explanation of the support in the disclosure" must be indicated for all changes, including all features of all new claims.

### ***Drawings***

A formal copy of the drawing sheet filed 10/08/1998 which incorporates the amendment to figure 1 is required.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the

Art Unit: 3653

extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571 or 703-308-6552**.

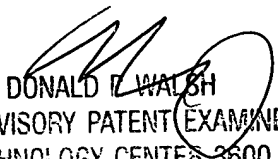
Art Unit: 3653

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

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January 7, 2004

  
DONALD T. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600